Mr Valdis Dombrovskis
Vice-President of the European Commission
European Commission
Rue de la Loi, 200/Weststraat 200
1049 Brussels
Belgium

21 December 2017

Dear Vice-President

We are writing to highlight that ambiguity regarding the scope of the PRIIPs Regulation may result in a substantial reduction in the availability of non-structured bonds to retail investors in the EEA from 1 January 2018.

This potential reduction in the availability of these bonds to retail investors would have negative impacts on:

- corporate and other real economy borrowers, who would find themselves unable to tap directly the considerable amount of savings in retail hands, in direct contradiction with the CMU objective to increase market-based finance;
- the public, who would be limited to direct investments into bonds with a PRIIPs key information document or KID (which we understand are likely to be a minority), bond funds (which come at a higher cost), structured products based on these bonds (which are more costly and riskier for retail investors) or ordinary shares); and
- liquidity in bond markets, which from 1 January 2018 could potentially lose direct retail investors both for new issues without a PRIIPs KID (which we understand will be a considerable proportion of the total) and existing issues without a PRIIPs KID (potentially all of them).

The consequences highlighted above stem from uncertainty as to the scope of the PRIIPs Regulation, which leads advisers to a conservative and wide interpretation, effectively bringing within scope bonds that are neither structured nor packaged: these so-called "plain vanilla" bonds which contain certain investor-protective features (by which we mean, absent default, the amount returned would always be par or above) such as inflation-linked principal and interest, make-whole call options and some change of control put options. Bonds with one or more of these features represent a substantial majority of the "plain vanilla" issuance.

We understand that neither borrowers nor the banks who advise them are likely to want to take on the potential liability and ongoing costs linked to producing a PRIIPs KID document and keeping it up to date, as well as any liability that may accrue to the banks in jurisdictions outside the EU in relation to the contents of the PRIIPs KID. Furthermore, we understand that the borrowers are unlikely to be willing to allow any other third party to produce their KID when they do not want to do so themselves.

Consequently, the underwriting bank world is taking the view that, given these obligations, a considerable proportion of new bond issues will be documented without a PRIIPs KID, such that they are left in the position that bonds of this type cannot be sold to retail clients in the EEA, and therefore are sold only to those professional clients that are not acting on behalf of retail clients or who could on-sell to them. In practice, only retail clients who entrust their assets to a discretionary asset manager would be able to access bond issues after 1 January 2018. All others would be limited to indirect investments via investment funds, truly structured products or the very limited amount of new bonds that may have an associated PRIIPs KID.

We do not believe that such a restriction of the investment and portfolio diversification options available to retail investors was the intention of the European Commission and the co-legislators, who were clearly and rightly concerned about structured, indirect investments, rather than these non-structured bonds described above. An outcome whereby retail investors could directly purchase shares and sovereign bonds, without the ability to invest straight into highly rated corporate credit appears unintended. We do not believe that such a state of affairs would be conducive to promoting growth in Europe, fostering retail investment into European companies and reducing the dependence of the European industry on bank funding as envisaged by the CMU action plan.

Given the ambiguity as regards the scope of the PRIIPs Regulation, we look forward to cooperating with the EC in the coming period to help minimise the adverse outcomes outlined above whilst maintaining the high level of protection for investors in retail structured products rightly desired by the EU institutions.

We look forward to hearing from you.

Yours sincerely

Simon Lewis OBE
Chief Executive Officer
Association for Financial Markets in Europe (AFME)

Florence Bindelle
Secretary General
European Issuers

cc: Mr Steven Maijoor, Chair of ESMA & Chair of the Consumer Protection and Financial Innovation Sub-Committee of the Joint Committee of the ESAs, ESMA
Mr Gabriel Bernardino, Chair of the European Insurance and Occupational Pensions Authority
Mr Andrea Enria, Chairperson of the European Banking Authority
Mr Ugo Bassi, Director, DG FISMA - European Commission